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October 11, 1991

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FM LAWYERS

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Federal Communications Commission  
Office of the Secretary

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

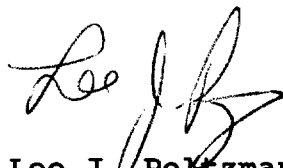
Re: File No. BPED-900606MC  
Murrysville, PA

Dear Ms. Searcy:

Transmitted herewith, on behalf of He's Alive Incorporated, applicant, applicant for a new non-commercial educational FM station on Channel 201A at Murrysville, Pennsylvania, are an original and two (2) copies of its Further Opposition with respect to the Supplement to Petition to Dismiss or Deny filed by Carnegie-Mellon Student Government Corporation.

Should questions arise with respect to this Amendment, please contact the undersigned.

Very truly yours,



Lee J. Peltzman  
Counsel for  
HE'S ALIVE INCORPORATED

LJP:bpt  
Enclosure  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

OCT 11 1991

Federal Communications Commission  
Office of the Secretary

In re Application of )  
HE'S ALIVE, INCORPORATED )  
Construction Permit for a )  
New Non-Commercial Educational )  
FM Station on Channel 201A at )  
Murrysville, Pennsylvania )

File No. BPED-900606MC

To: Chief, Audio Services Division

FURTHER OPPOSITION

He's Alive Incorporated ("He's Alive"), applicant for a new non-commercial educational FM station at Murrysville, Pennsylvania on Channel 201A, by its counsel, hereby opposes the Supplement to Petition to Dismiss or Deny filed by Carnegie-Mellon Student Government Corporation ("CMSGC") on July 15, 1991. In support of its position, He's Alive submits the following:

CMSGC continues its unwarranted attack on He's Alive's qualifications to be licensee of a Murrysville non-commercial educational FM station. CMSGC levels two types of attacks on He's Alive's application. First, CMSGC claims that He's Alive has violated the Commission's technical rules. Additionally, CMSGC speculates that He's Alive must be financially and technically unqualified because He's Alive is in violation of rules and has failed to response<sup>d</sup> to application questions which do not exist.

In fact, He's Alive is well qualified to be a Commission licensee of a Murrysville FM non-commercial educational station. In that regard, it is noted that He's Alive is already the licensee of three non-commercial educational stations and one FM translator.

Further, as a result of a Petition for Leave to Amend filed concurrently with this Opposition, there can be no doubt that He's Alive's application is in compliance with Sections 73.316(b)(1) and (b)(2) of the FCC's rules. As noted in the Engineering Statement attached to He's Alive's Petition for Leave to Amend, the radiation pattern contained in the application, as amended, filed by He's Alive inadvertently showed a minor drafting error which has been corrected.

With respect to CMSGC's other allegations, there clearly is no substantive legal basis for them. For example, the Commission has no requirements regarding city coverage by non-commercial FM applicants. Unless the Commission intends to commence such a policy in this case, CMSGC is out of line in alleging that He's Alive will not satisfactory serve the community of Murrysville with an acceptable signal level. Even CMSGC admits that the Commission's rules do not require non-commercial educational FM stations to provide a specific minimum signal levels over their principal community. Whatever the opinion of CMSGC's engineer with respect to what constitutes "standards of good engineering

practice", such is not within the Commission's rules and, thus, there can be no basis for designating a technical issue or finding He's Alive's proposal to be unacceptable.

CMSGC also alleges that He's Alive is financially unqualified and does not have site assurance. In fact, He's Alive is financially qualified and has recertified its financial qualifications in an amendment filed today. While this was not necessary under the Commission's rules, He's Alive has certified once again so that the Commission may be assured that it is financially qualified. While He's Alive amended proposal does not include a reasonable assurance statement, such is not required in the non-commercial educational application form. Therefore, He's Alive cannot be held responsible for its failure to respond to a non-existent question.

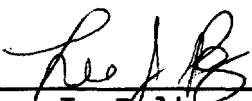
Accordingly, in view of the above, CMSGC's Supplement to Petition to Dismiss or Deny should receive the same treatment as its earlier filed Petition to Dismiss or Deny. In both cases, there is no basis for the dismissal or denial of He's Alive's application. He's Alive is qualified to be a Commission licensee in this case, as it has been found qualified with respect to its other applications. In the event that CMSGC continues to refuse to meet with He's Alive for the purposes of working out a settlement

of this matter, the Commission must, regretfully, designate both applications for comparative hearing.

Respectfully submitted,

**HE'S ALIVE, INCORPORATED**

By:

  
\_\_\_\_\_  
Lee J. Feltzman  
Its Attorney

**BARAFF, KOERNER, OLENDER  
& HOCHBERG, P.C.  
5335 Wisconsin Avenue, N.W.  
Suite 300  
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(202) 686-3200**

**October 11, 1991**

13328.00\Pleading.Opposition

## **ENGINEERING STATEMENT**

### **HE'S ALIVE, INC. APPLICATION FOR A NEW NCE-FM STATION MURRYSVILLE, PENNSYLVANIA**

**Channel 201A**

**199.5 Watts (Max. DA)**

**74 Meters**

This Engineering Statement is prepared on behalf of He's Alive, Inc., applicant seeking permission from the FCC to construct a new non commercial FM station to serve Murrysville, Pennsylvania, to respond to a "Supplement to Petition to Dismiss or Deny" filed by Carnegie-Mellon Student Government Corporation, licensee of NCE-FM Station WRCT, Pittsburgh, Pennsylvania. Their Consulting Engineer has stated that He's Alive, Inc. application (BPED-900606MC) proposed directional antenna system violates Section 73.316 of the Rules and Regulations by not providing the pattern 15 dB ratio of maximum radiation, 2 dB per 10 degree of azimuth swing, and a complete description of the proposed antenna system including manufacturers and model numbers.

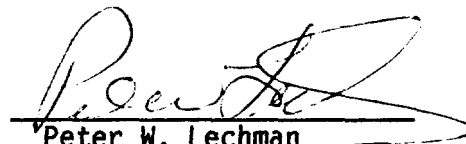
He's Alive, Inc. proposed directional antenna system is addressed in Exhibit VB-11 of its application. The Exhibit specifically states that the design of the directional antenna system is an envelop whereby the fields being produced would not cause objectional interference to other licensed facilities. The Federal Communications Commission, by its policy, has allowed on various occasions and accepted by them, design of envelop radiation patterns for the non-commercial allocated frequencies. The application in question has provided the Commission the requirements of an envelop radiation pattern. Should the applicant be successful in obtaining a Construction Permit, all appropriate radiation patterns provided by a manufacturer will be submitted to the Commission when filing for its license.

Submitted herewith are amended Exhibits VB-11, pages 2 and 4. The radiation pattern on Page 2 submitted in the application inadvertently showed a minor drafting error. This amended pattern merely corrects this oversight. Page 4 is a tabulation of information pertaining to the relative fields of the directional antenna system. The relative fields are shown on the amended Exhibit to four significant figures instead of two significant figures in its application. Computations now can be made to show that the applicants meets the requirements of Section 73.316 (b) of the FCC Rules and Regulations.

**LECHMAN & JOHNSON, INC.**

With regards to the concern about coverage of Murrysville, the FCC has no requirements regarding non commercial FM proposals.

LECHMAN & JOHNSON, INC.

A handwritten signature in black ink, appearing to read "Peter W. Lechman", written over a horizontal line.

Peter W. Lechman  
President  
September 9, 1991

LECHMAN & JOHNSON, INC.

AUGUST 1991

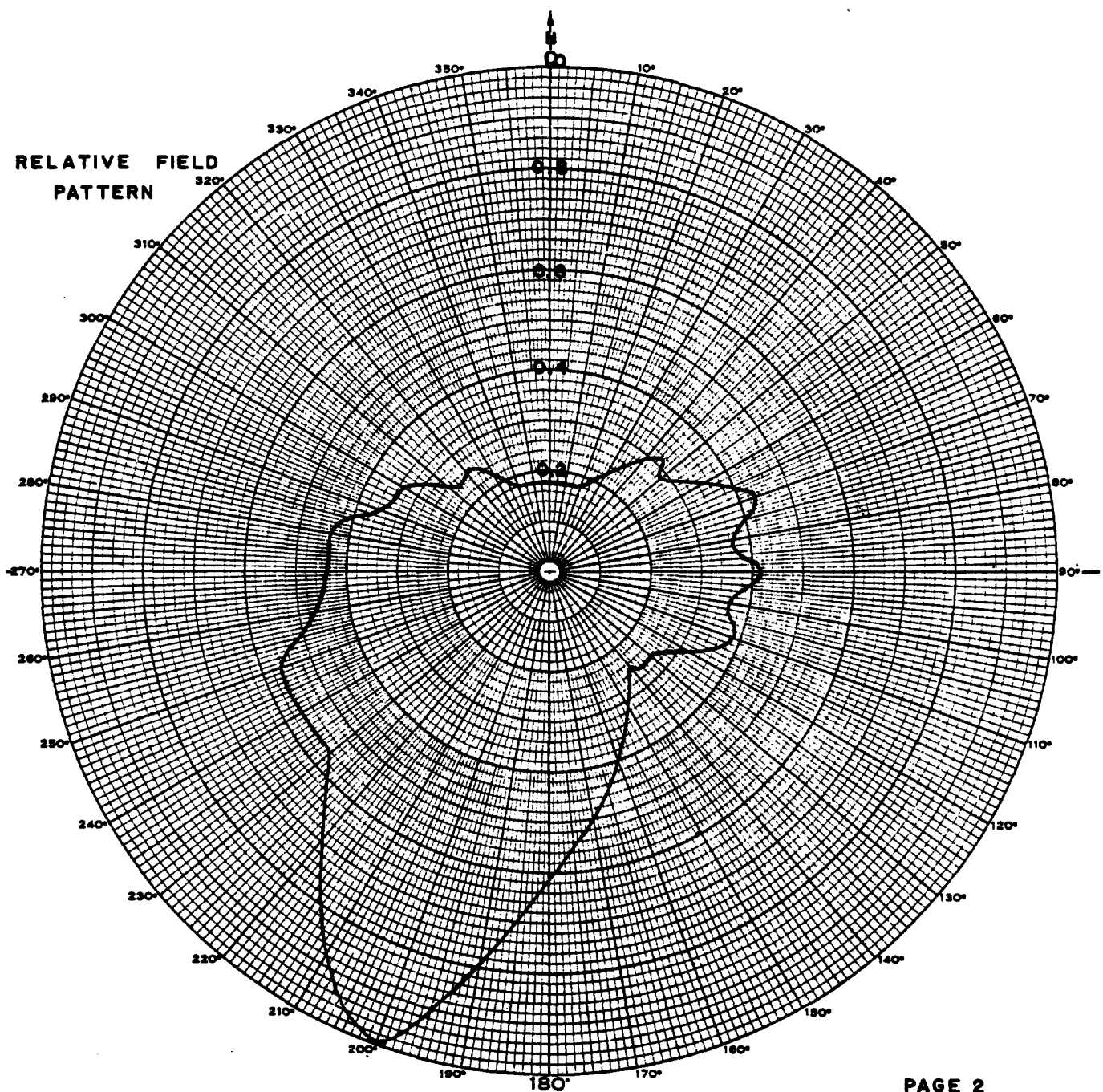


EXHIBIT VB-II Amended

HE'S ALIVE, INC.  
FURTHER AMENDMENT TO APPLICATION FOR A NEW  
NON COMMERCIAL FM STATION  
MURRYSVILLE, PENNSYLVANIA

Channel 201A

199.5 (MAX) DA

74 Meters

Prepared By  
LECHMAN & JOHNSON, Inc.  
TELECOMMUNICATIONS CONSULTANTS  
LADNAN, MARYLAND



AMENDED (August 1991)

EXHIBIT VB-11 - Page 4

DIRECTIONAL ANTENNA INFORMATION

HE'S ALIVE, INC.  
APPLICATION TO MODIFY THE LICENSED FACILITIES  
MURRYSVILLE, PENNSYLVANIA

Channel 201A		199.5 Watts (MAX) DA		74 Meters
<u>Azimuth</u>	<u>Rel. Fld.</u>	<u>dB</u>	<u>dBk</u>	<u>kW</u>
0	0.1778	-15.0	-22.0	0.0063
10	0.1778	-15.0	-22.0	0.0063
20	0.1778	-15.0	-22.0	0.0063
30	0.2239	-13.0	-20.0	0.0100
40	0.2818	-11.0	-18.0	0.0159
45	0.3199	- 9.9	-16.9	0.0204
50	0.2818	-11.0	-18.0	0.0159
60	0.3467	- 9.2	-16.2	0.0240
70	0.4365	- 7.2	-14.2	0.0380
80	0.3631	- 8.8	-15.8	0.0263
90	0.4217	- 7.5	-14.5	0.0355
100	0.3631	- 8.8	-15.8	0.0263
110	0.3890	- 8.2	-15.2	0.0302
120	0.3199	- 9.9	-16.9	0.0204
130	0.2600	-11.7	-18.7	0.0135
135	0.2661	-11.5	-18.5	0.0141
140	0.2512	-12.0	-19.0	0.0126
150	0.3162	-10.0	-17.0	0.0200
160	0.3981	- 8.0	-15.0	0.0316
170	0.5012	- 6.0	-13.0	0.0501
180	0.6310	- 4.0	-11.0	0.0794
190	0.7943	- 2.0	- 9.0	0.1259
200	1.0000	0.0	- 7.0	0.1995
210	0.8913	- 1.0	- 8.0	0.1585
220	0.7079	- 3.0	-10.0	0.1000
225	0.6310	- 4.0	-11.0	0.0794
230	0.5623	- 5.0	-12.0	0.0631
240	0.5623	- 5.0	-12.0	0.0631
250	0.5623	- 5.0	-12.0	0.0631
260	0.4732	- 6.5	-13.5	0.0447
270	0.4467	- 7.0	-14.0	0.0398
280	0.4467	- 7.0	-14.0	0.0398
290	0.3548	- 9.0	-16.0	0.0251
300	0.3350	- 9.6	-16.6	0.0219
310	0.2630	-11.6	-18.6	0.0138
315	0.2371	-12.5	-19.5	0.0112

LECHMAN & JOHNSON, INC.

DIRECTIONAL ANTENNA INFORMATION

HE'S ALIVE, INC.  
APPLICATION TO MODIFY THE LICENSED FACILITIES  
MURRYSVILLE, PENNSYLVANIA

Channel 201A		199.5 Watts (MAX) DA		74 Meters
<u>Azimuth</u>	<u>Rel. Fld.</u>	<u>dB</u>	<u>dBk</u>	<u>KW</u>
320	0.2570	-11.8	-18.8	0.0132
330	0.2239	-13.0	-20.0	0.0100
340	0.1778	-15.0	-22.0	0.0063
350	0.1778	-15.0	-22.0	0.0063


**CERTIFICATE OF SERVICE**

I, Barbara P. Taylor, a secretary in the law office of Baraff, Koerner, Olender & Hochberg, P.C., do hereby certify that on this 11th day of October, 1991, copies of the foregoing document were sent first class United States mail, postage prepaid to the following:

Dennis Williams, Chief\*  
FM Branch - Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
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Washington, D.C. 20554

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Barbara P. Taylor

\*Via Hand Delivery